



## American Indian Health Commission for Washington State “Improving Indian Health through Tribal-State Collaboration”

Chair  
**Marilyn Scott**  
Upper Skagit Tribe

Vice-Chair  
**Cheryl Sanders**  
Lummi Tribe

Treasurer  
**Stephen Kutz**  
Cowlitz Tribe

Secretary  
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Suquamish Tribe

Member-at-Large  
**Brent Simcosky**

Executive Director  
**Brent Simcosky**  
(Interim)  
Jamestown S'Klallam  
Tribe

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Member Organizations:  
**Seattle Indian Health  
Board**  
**NATIVE Project of  
Spokane**

September 10, 2013

HCA Rules Coordinator  
PO Box 45504  
Olympia WA, 98504-5504

### **Re: CR-102 13-16-096 Proposed Rules under WAC, Title 182 for Implementation of the Patient Protection and Affordable Care Act**

Dear Sir or Madam:

The American Indian Health Commission for the State of Washington (AIHC) works on behalf of the twenty-nine Tribes and the two urban Indian health clinics in the State of Washington to ensure increased AI/AN access to quality health care. We are providing this comment letter in response to the proposed rulemaking by the Health Care Authority (HCA), filed on August 7, 2013. Pursuant to Second Engrossed Second Substitute House Bill (2E2SHB) 1738, Laws of 2011, the proposed rules would amend several sections in WAC, Title 182 by implementing regulations under the Patient Protection and Affordable Care Act in preparation for health care reform in Washington State. The proposed Washington Administrative Code (WAC) rules include WAC 182-509-0340 which provides the American Indian/Alaska Native (AI/AN) income exemptions for determining eligibility for most individuals applying for Medicaid. The rules for Medicaid AI/AN income exemptions will have significant consequences for a large segment of the AI/AN population. We appreciate the opportunity to comment on this important matter.

#### **BACKGROUND ON MEDICAID ELIGIBILITY AND AI/AN INCOME EXEMPTIONS**

The Patient Protection and Affordable Care Act (ACA) requires States to use Modified Adjusted Gross Income (MAGI) for certain Medicaid eligibility determinations by amending Section 1902 (e)(14) of the Social Security Act (SSA). In 2014, Medicaid eligibility determinations will be divided into two groups in the State of Washington: (1) MAGI Methodology; and (2) Classic Medicaid. The MAGI group covers the majority of the Medicaid population and will include applications/renewals for pregnant women, children, families, and the “newly eligible” adult group. As of January 1, 2014, the newly eligible group includes individuals between the ages of 19 up to 65 with income up to 138% FPL based on Modified Adjusted Gross Income (MAGI). The expansion also moves children, pregnant women and adults with dependent children to the new MAGI methodology. Classic Medicaid will include aged, blind or disabled individuals, foster care children and Supplemental Security Income (SSI) recipients.

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The eligibility determinations for Classic Medicaid remain unchanged by the Proposed Rules.

Federal regulations significantly change the eligibility determination process for individuals within the MAGI group. Effective March 23, 2012, the Department of Health and Human Services (HHS) established the methodologies for States to determine financial eligibility based on MAGI for most individuals in 42 CFR 435.603(e). These methodologies implement the definition of MAGI and household income in the Internal Revenue Code, 26 USC 36B(d)(2)(B) with certain exceptions. These exceptions include six major income exemptions for American Indians and Alaska Natives (AI/AN) specified in 42 CFR 435.603(e)(3)(i-vi).

### **PROPOSED WAC 182-509-0340 DOES NOT COMPORT WITH FEDERAL LAW AND SHOULD BE STRICKEN**

Proposed WAC 182-509-0340 provides the AI/AN income exemptions for determining eligibility for Medicaid categories that utilize the MAGI methodology. The AI/AN income exemptions cited in proposed WAC 182-509-0340 are inconsistent with 42 CFR 435.603(e)(3)(i-vi). (See Attachment 1). It is also not consistent with Internal Revenue Service's (IRS) issuances on AI/AN reportable income for federal income tax and MAGI determinations. Rather, proposed WAC 182-509-0340 appears to reflect certain pre-ACA Medicaid resource and income calculations that are no longer used under the ACA for the purposes of Medicaid MAGI calculations, and thus does not satisfy federal law. We recommend striking proposed WAC 182-509-0340 altogether, and rewriting the WAC to provide parity with 42 CFR 435.603(e)(3)(i-vi), the Internal Revenue Code (IRC), and all current rules, notices, and publications regarding AI/AN income exemptions. We further recommend adding a subsection that further requires all AI/AN income exemptions found in the IRC and IRS rules, notices, and guidance be included in determining MAGI. We are providing a proposed rewrite that we previously discussed with Health Care Authority (HCA) staff (See Attachment 2).

### **PROPOSED WAC 182-509-0770 DOES NOT HAVE MAGI AI/AN INCOME EXEMPTIONS**

While not addressed in the August 7, 2013, CR-102, the HCA recently issued proposed AI/AN income exemption rules for classic Medicaid under WAC 182-512-0770. This proposed rule treats AI/AN income exemptions differently than MAGI AI/AN income exemptions. These exemptions are less beneficial to AI/AN people. If adopted this would also create administrative complexity for HCA, AI/AN applicants and WHBE, by having two different income exemption rules. This matter is of significant concern to the Tribes and AIHC. We would request the opportunity to discuss proposed WAC 182-512-0770 with HCA as soon as possible.



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### **TRIBAL CONSULTATION REQUIREMENTS**

Pursuant to Section 5006(e) of the American Recovery and Reinvestment Act of 2009 (ARRA), the State of Washington is required to consult with tribes on State Medicaid regulations that will likely have a compliance cost or direct impact to tribes, Urban Indian Health Programs or AI/AN. In addition, HCA's Consultation and Communication Policy (See Attachment 3, p.7) requires direct consultation on such issues and requires such consultation to be initiated by a written communication to tribal leaders and Indian health programs. The final rule on AI/AN income exemptions will have a direct impact on individual AI/AN, tribes, and urban Indian health programs as they are determining who will have access to Medicaid coverage and which individuals will have to seek coverage elsewhere.

The AIHC is not aware of a consultation occurring on this matter. We request the HCA initiate a consultation consistent with the above federal and state requirements before final implementation of this rule.

AIHC appreciates the opportunity to comment on this important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance regarding this matter, please do not hesitate to contact us.

Sincerely,

Marilyn Scott, Chair  
American Indian Health Commission

Enclosure

cc: Tribal Leaders  
AIHC Delegates  
Karol Dixon, Tribal Liaison, Health Care Authority  
Jessie Minier, Eligibility Policy Representative, Health Care Authority  
Sheryl Lowe, Tribal Program Liaison, Washington Health Benefits Exchange  
Joan Altman, Policy Analyst, Washington Health Benefits Exchange  
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